

**REMARKS**

Claims 26–66 are pending in this application. Non-elected claims 33–66 are withdrawn from consideration by the Examiner. By this Amendment, claims 26, 27, 29, 34, 35, 38, and 39 are amended. Support for the amendments to the claims may be found, for example, in the original claims and in the specification. No new matter is added.

In view of the foregoing amendments and following remarks, reconsideration and allowance are respectfully requested.

**I. Claim for Priority—Second Request for Acknowledgment**

A Claim for Priority to FR 0450600 was indicated in the ADS filed with the application on August 28, 2006. The Office Action acknowledges receipt of the certified copy of the priority application. The Examiner is requested to acknowledge the claim for foreign priority and receipt of the certified copy of the priority application in the next Office Action Summary.

**II. Rejection under 35 U.S.C. §112, Second Paragraph**

The Office Action maintains its rejection of claims 26–32 as being indefinite under 35 U.S.C. §112, second paragraph. The Office Action argues that the disputed terms do not provide structural or functional limitations. The Office Action provides as an example, "The art recognized definition of polymer is a natural or synthetic compound made up of repeat units of monomers. No structural limitations are provided by either the art recognized definition or the instant specification." Applicants respectfully disagree.

Applicants do not understand the basis on which the Office Action can possibly maintain that "a natural or synthetic compound made up of repeat units of monomers" does not define a structural limitation. Although this definition encompasses many compounds, it is definite. One of skill in the art can discern between a compound that is made up of repeat units of monomers and compounds that are not made up of repeat units of monomers.

Likewise, one of skill in the art can discern between "at least two detectable markers interlinked by at least one multimeric structure" and, for example, two detectable markers that are interlinked by something other than a multimeric structure.

Also, "linear chain" defines structure, as does "covalent bond." One of skill in the art can easily discern between a "linear chain" and other structures, such as a branched chain. One of skill in the art can discern between a "covalent bond" and, for example, a non-covalent bond. Additionally, one of skill in the art can easily discern between "at least two covalent bonds" and, for example, only one covalent bond or no covalent bonds. As such, the recitation "a linker arm comprising a linear chain of at least two covalent bonds" defines structural limitations and does not render the claims indefinite.

For similar reasons, "a linker arm comprising at least one covalent double bond enabling the conjugation of the diazo function with the aromatic ring" does not render the claims indefinite. "At least one covalent double bond" defines a structural limitation.

Looking at the claims as a whole, the pending claims set out and circumscribe a particular subject matter with a reasonable degree of clarity and particularity that allows one of skill in the art to determine what will infringe the claims. Accordingly, reconsideration and withdrawal of the rejection are requested.

### **III. Rejection Under 35 U.S.C. §102**

The Office Action rejects claim 26 under 35 U.S.C. §102(b) over Bourget. Applicants respectfully traverse the rejection.

By this Amendment, claim 26 is amended to recite, "m is an integer between 2 and 10." As such, claim 26 does not read upon the non-elected species asserted by the Office Action that is taught by Bourget. Accordingly, reconsideration and withdrawal of the rejection are respectfully requested.

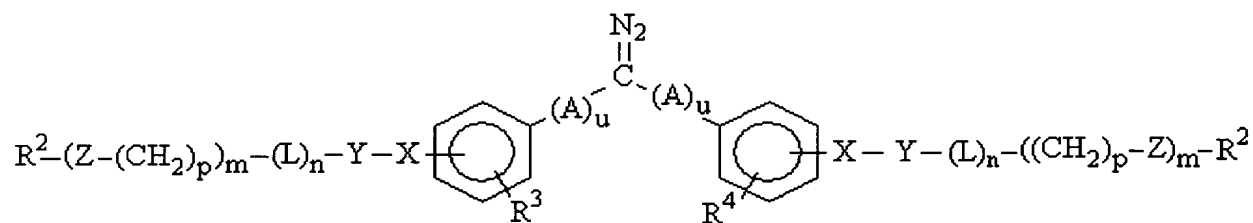
#### IV. Obviousness-Type Double Patenting Rejection

The Office Action rejects claim 26 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1–20 of Bourget. Applicants respectfully submit that the amendments made to claim 26 that overcome the §102 rejection over Bourget also overcome the double patenting rejection. Reconsideration and withdrawal of the rejection are respectfully requested.

#### V. Request for Rejoinder

Because generic claim 26 is believed to be patentable over Bourget for at least the reasons discussed above, Applicants respectfully request rejoinder and examination of the non-elected species. Also, because non-elected claims 36, 38, 40, 42, 44, 46, 48, 50, 52, 54, 55, 57, 59, 61, 63, and 65 each depends from product claim 26 and, thus, requires all the limitation of claim 26, their rejoinder and examination are also respectfully requested.

Furthermore, Applicants also respectfully request rejoinder and examination of independent product claim 34 and each of its dependent claims. Claim 34 is directed to a temperature-stable labeling reagent of formula (6):



where  $R^2$ ,  $R^3$ ,  $X$ ,  $Y$ ,  $Z$ ,  $L$ , and  $A$  are the same as set forth in claim 26. As such, the half-structure of the above formula is almost the same as formula (0). Therefore, there are many structural elements that are in common between the two general formulas, including the structural element of  $-(Z-(CH_2)_p)_m-$  where "Z" represents  $-NH-$ ,  $-NHCO-$ , or  $-CONH-$ . As discussed in the previous Amendment, this structural element has the following inventive features:

...the use of polyaminated arms...make it possible to distance the biotin from the reactive center (diazo function). Thus, a better solubility in aqueous medium is obtained through the introduction of the hydrophilic arm, with the possibility of protonation of the amines in an aqueous medium at neutral pH, which produces an attraction between the nucleic acids, which are negatively charged, and the label, with two main consequences:

- more rapid labeling, which may be particularly advantageous for samples at low concentration, and
- stabilization of the double helix by neutralization of the negative charges of the phosphates.

*See specification at page 3, line 23 to page 4, line 4.*

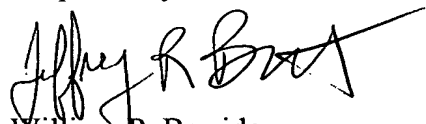
Because Bourget does not disclose this structural feature, this feature combined with the other structural features that are common to all the claims defines a contribution over the prior art. Thus, there is a special technical feature shared between independent claims 26 and 34 and, indeed, between all the claims. Therefore, unity of invention exists between all the claims, and Applicants respectfully request that the restriction requirement be withdrawn and all the non-elected claims and species be rejoined and examined.

## **VI. Conclusion**

In view of the foregoing, it is respectfully submitted that this application is in condition for allowance. Favorable reconsideration and prompt allowance of the application are earnestly solicited.

Should the Examiner believe that anything further would be desirable in order to place this application in even better condition for allowance, the Examiner is invited to contact the undersigned at the telephone number set forth below.

Respectfully submitted,



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